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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

WMBIC INDEMNITY CORPORATION,

Petitioner,

vs.

DAVID M. SHORT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the full faith and credit clause of the United States Constitution requires California courts to enforce a Wisconsin statute, that provides for abatement of all actions wherever maintained, against a Wisconsin insurer that has no assets in California ordered to undergo liquidation under Wisconsin law.

2. Whether under the full faith and credit clause California's interest in providing a forum for its citizens within which to prosecute civil claims, outweighs Wisconsin's interest in controlling the liquidation and distribution of assets of its insolvent, or financially disabled insurers.

LIST OF PARTIES AND RULE 28.1 INFORMATION

The parties to the proceedings below were petitioner, WMBIC Indemnity Corporation, and respondent, David M. Short. Petitioner WMBIC is a defendant, erroneously sued as MGIC Indemnity Corporation and AMBAC Indemnity Corporation, in this action filed by Short. Petitioner's co-defendants, Lewis, D'Amato, Brisbois and Bisgaard, David B. Parker, and Continental Casualty Company did not participate in the proceedings that led to the filing of this petition.

Petitioner WMBIC is currently in liquidation and the actual interest of any parent corporation is dependent on the outcome of that proceeding. A list of WMBIC's affiliates is attached as Appendix "D."

The ultimate parent of this corporate family is PHLCORP, Inc., formerly Baldwin-United Corporation. PHLCORP's interest in WMBIC is held in a "Liquidating Trust," created under the Baldwin reorganization plan. Recently, however, a subsidiary of Leucadia National Corporation obtained a controlling interest in PHLCORP. A copy of Leucadia's organizational chart is attached as Appendix "E." Leucadia has an interest in WMBIC because it purchased claims representing a 57 percent interest in the Liquidating Trust.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1986

WMBIC INDEMNITY CORPORATION,

Petitioner,

vs.

DAVID M. SHORT,

Respondent.

PETITION FOR WRIT OF CERTIORARI

The petitioner, WMBIC Indemnity Corporation, respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeal, State of California, Second Appellate District denying WMBIC's petition for writ of mandate. That petition sought reversal of an order of the Superior Court of the State of California, for the County of Los Angeles, entered in the above-entitled proceeding on August 28, 1986.

JURISDICTION

The order of the Superior Court of the State of California, County of Los Angeles, that was entered on August 28, 1986, denied petitioner's motion to dismiss this action. The Court of Appeal, State of California, Second Appellate District denied a timely petition for writ of mandate to reverse the Superior Court's judgment on December 10, 1986. Thereafter, on January 28, 1987, the Supreme Court of California denied a timely petition for review. The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(3). (The orders of the Supreme Court, the Court of Appeal and the Superior Court are attached to this petition as appendices "A," "B" and "C," respectively.)

STATUTES INVOLVED

Article IV, section 1 of the United States Constitution:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

Wisconsin statutes section 645.49(1):

> "Actions by and against liquidator.
>
> > "(1) Termination of actions against insurer by appointing liquidator. Upon issuance of any order appointing the commissioner liquidator of a domestic insurer or of an alien insurer domiciled in this state, all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated and the liquidator shall not intervene in them, except as provided in this subsection. Whenever in the liquidator's judgment an action in this state has

> proceeded to a point where fairness or convenience would be served by its continuation to judgment, the liquidator may apply to the court for leave to defend or to be substituted for the insurer, and if the court grants the application, the action shall not be abated. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, with approval of the court, the liquidator may intervene in the action. The liquidator may defend at the expense of the estate of the insurer any action in which he or she intervenes under this section at the expense of the estate of the insurer."

California Code of Civil Procedure section 410.30(a):

> "(a) When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just."

STATEMENT OF THE CASE

This is an action for alleged breach of contract and other claims, arising out of a policy of directors and officers liability insurance issued by MGIC Indemnity Corporation to the American City Bank. Petitioner WMBIC is, by means of a series of corporate name changes, a successor to MGIC Indemnity Corporation. Respondent Short is a former officer of the American City Bank, and allegedly a citizen of California.

Short is a defendant in an action entitled *FDIC v. Kreedman, et al.*, now pending before the United States District Court, Central District of California, case no. CV85-704JMI(Bx). This FDIC action was filed against former officers and directors of the American City Bank, such as Short, for their alleged misconduct resulting in the bank's failure. The instant action arises out of the alleged failure of WMBIC to pay Short's defense fees pursuant to the liability insurance policy issued to the bank.

Petitioner WMBIC is a Wisconsin corporation authorized to do business in California. WMBIC, however, has no assets in California and no contact with that state other than claims, such as those involved in this case, made under policies it inherited from MGIC and other predecessor entities.

On June 28, 1985, Judge William C. Sachtjen of the Dane County Circuit Court, State of Wisconsin, signed an order appointing the Wisconsin Commissioner of Insurance as the liquidator of petitioner WMBIC and placing WMBIC into liquidation pursuant to Wisconsin Statutes Chapter 645. Wisconsin Statutes section 645.49(1) states in part, as follows:

> "Upon the issuance of an order appointing the Commissioner liquidator of a domestic insurer or of an alien insurer domiciled in the state, all actions and all proceedings against the insurer whether maintained in this state or elsewhere shall be abated . . ."

HOW THE FEDERAL QUESTION WAS PRESENTED

Short filed his complaint against WMBIC on February 7, 1986. On August 28, 1986 the Superior Court of

California, County of Los Angeles, heard WMBIC's motion to dismiss the complaint on the grounds of inconvenient forum. The motion was made pursuant to California Code of Civil Procedure section 410.30. At the time the motion was heard, that statute permitted California courts to dismiss an action upon a finding that "in the interest of substantial justice an action should be heard in a forum outside" California.

WMBIC's motion was based on Wisconsin's requirement of abatement of all actions, wherever maintained, against any insurer ordered into liquidation in Wisconsin, as set forth in Wisconsin Statutes section 645.49(1). In addition, since WMBIC has no assets in California, enforcement of any judgment Short might obtain will have to occur in Wisconsin through the liquidation proceedings. Therefore, WMBIC argued that California was an inconvenient forum, and the action should be dismissed. WMBIC argued that this result was mandated by the full faith and credit clause of the United States Constitution Article IV, section 1, in that under the circumstances, California was obligated to enforce the requirement of abatement contained in the Wisconsin statute.[1]

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[1] WMBIC also sought to enforce an order of abatement issued by the Wisconsin court in a related liquidation proceeding involving WMAC Investment Corporation, the successor of MGIC Investment Corporation and immediate parent of WMBIC. At the time of the hearing on WMBIC's motion to dismiss, however, neither the precise nature of the relationships between these entities, nor the effect on the liquidation proceedings were clear. Accordingly, petitioner WMBIC feels compelled to limit the issues presented by this petition to the failure to enforce the Wisconsin statutes.

Short opposed the motion on the grounds that the Wisconsin statutes did not actually require abatement, and that there were no extraordinary circumstances justifying application of the doctrine of forum non conveniens under California law. Short argued that the full faith and credit clause did not require abatement because the abatement provision of the Wisconsin statute was discretionary, not mandatory. Respondent also argued that the Wisconsin legislature itself recognized that the words "or elsewhere" had been included in the abatement provision of this statute for whatever effect they may have, thus suggesting that Wisconsin itself did not intend or believe that full faith and credit would be afforded by other states. This latter argument was apparently based on the official legislative comments immediately following the Wisconsin Statutes section 645.49 that state in part that:

> "The two words 'or elsewhere' in the first sentence may not always be effective. If the liquidation order is accompanied by dissolution of the insurer, however, the death of the insurer may abate the actions elsewhere. Moreover, the terms of statutes elsewhere may give extra territorial effect to this provision. The words 'or elsewhere' are included for whatever effect they may have. At worst, they will be ineffective; they do not endanger the remainder of this section or the chapter as a whole. Moreover, they give the liquidator a lever in negotiation that he would not have without them."

In addition to the foregoing, Short filed written evidentiary objections to the declarations petitioner filed in support of its motion to dismiss.

After hearing oral argument, no transcript of which was prepared, the Superior Court denied petitioner's motion, without explanation of the basis for the ruling. The court also did not make any expressed ruling on Short's evidentiary objections. The court's ruling on the motion

was set forth in a minute order entered August 28, 1986 (Appendix "C").

Following the Superior Court's ruling WMBIC had no right of appeal, and no remedy at law, other than to seek relief by way of a petition for a writ of mandate to the California Court of Appeal. Accordingly, petitioner filed a petition for writ of mandate, or other appropriate extraordinary relief, in the Court of Appeal, Second Appellate District on September 25, 1986.

In that petition, WMBIC sought a writ commanding the Superior Court to vacate its ruling and enter an order of dismissal. The petition was based on WMBIC's contentions that the Superior Court abused its discretion in denying the motion to dismiss because under California law the doctrine of forum non conveniens was applicable, and because the full faith and credit clause required enforcement of the abatement provision in the Wisconsin statutes. WMBIC argued that the Wisconsin liquidation proceedings reflected that State's assertion of its authority to regulate its own insurance companies. WMBIC argued further that although California has an interest in providing a forum for its citizens, all WMBIC's assets are in Wisconsin under the control of the Wisconsin liquidator. Therefore, California courts could not ultimately resolve Short's claims against WMBIC because they have no power to distribute WMBIC's assets in the event a judgment is obtained. As a result, California's interests are not substantial enough to justify refusal to give full faith and credit to the Wisconsin statute. Short did not file any response to WMBIC's petition for writ of mandate.

On December 10, 1986, the Court of Appeal filed its order summarily denying the petition for writ of mandate. No hearing was held, and no written decision, or other explanation of the basis for denial was issued by the Court of Appeal. Following this decision, WMBIC had

no right under California law to petition for re-hearing in the Court of Appeal.

On December 22, 1986 WMBIC filed a petition for review of the Court of Appeal's decision, with the California Supreme Court. Once again WMBIC argued that under the circumstances presented, the Wisconsin statute's requirement of abatement must be given full faith and credit. In the petition for review, WMBIC emphasized that enforcement of the requirement of abatement could not conflict with any California interest or policy. WMBIC explained that under these circumstances, Wisconsin's interest in regulating its own insurers, and in preserving the assets of its insurers undergoing liquidation in that state, were superior to California's interests, which would not be promoted by permitting the action to proceed. Short filed no response to WMBIC's petition for review.

On January 29, 1987 the California Supreme Court entered its order denying WMBIC's petition for review. No written decision or other explanation of the basis for denial was issued.

REASONS FOR GRANTING THE WRIT

I.

THE REFUSAL OF THE CALIFORNIA COURTS TO ENFORCE THE ABATEMENT PROVISION OF THE WISCONSIN INSURER LIQUIDATION STATUTES RAISES IMPORTANT ISSUES CONCERNING THE RIGHTS OF STATES TO REGULATE THEIR OWN INSURERS

This case presents important issues regarding the application of the full faith and credit clause of the United States Constitution, Article IV, section 1. Resolution of these issues will affect the ability of the states to regulate and oversee the liquidation of assets of insurers located within their jurisdiction.

Regulation of the insurance industry is, and always has been, within the exclusive province of the states. As the late Justice Frankfurter once noted:

> "It is safe to say that state regulation of the insurance business is as old and as pervasive as any regulatory power exercised by our states. [Citation] . . . Indeed, after a pronouncement by this court that insurance partakes of commerce between the states, Congress by prompt legislation delegated or relegated the regulation of insurance, with appropriate exceptions, to the diverse laws of the several states. [Citation.]" *Morris v. Jones* (1946) 329 U.S. 545, 556-557, 67 S.Ct. 451, 91 L.Ed. 488, 499. (Dissenting opinion.)

Moreover, insurance companies are specifically excluded from federal bankruptcy law. *See* 11 U.S.C. section 109. Rehabilitation and liquidation of insolvent, or

financially disabled insurers is, therefore, the sole responsibility of the state governments.

Given the absence of federal regulation of the insurance industry generally, and insurer insolvency specifically, disputes regarding application of the full faith and credit clause to interstate conflicts arising from insurer liquidation proceedings have been resolved by this Court on several occasions. *See Converse v. Hamilton* (1912) 224 U.S. 243, 56 L.Ed. 749, 32 S.Ct. 415; *Clark v. Willard* (1934) 294 U.S. 211, 79 L.Ed. 865, 55 S.Ct. 356; *Morris v. Jones, supra* (1946) 329 U.S. 545, 67 S.Ct. 451, 91 L.Ed 488; and *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guarantee Association* (1982) 455 U.S. 691, 71 L.Ed.2d 558, 102 S.Ct. 1357. Unfortunately, none of these decisions directly address enforcement, by means of the full faith and credit clause, of one state's statutory law requiring abatement of actions pending in another state. Recognition of this procedure is crucial to preserve the ability of the states to regulate insurers incorporated or doing business under their laws, and to preside over the liquidation of insurers and distribution of assets located in their jurisdiction.

Petitioner WMBIC was ordered into liquidation by a Wisconsin court. The Wisconsin insurer liquidation statutes require abatement of all actions against an insurer ordered into liquidation, wherever those actions may be maintained. Specifically, Wisconsin Statutes section 645.49(1) provides, in pertinent part, that:

> "Upon issuance of any order appointing the commissioner liquidator of a domestic insurer or of an alien insurer domiciled in this state, *all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated . . .*" (Emphasis added.)

The purpose of this abatement provision, and similar statutes, such as the automatic stay provision of the Federal Bankruptcy Act, is obvious: To freeze the rights of creditors and policyholders, to prevent prejudicial preferences, and otherwise insure that all claimants will have their claims evaluated and treated as equitably as possible. Abatement assists liquidation by preventing unnecessary drain on the assets of the insolvent estate that would result from defending the insurer in numerous actions in several forums. Denying abatement seriously impinges upon the ability of Wisconsin and any other similarly situated states, to fulfill their right and responsibility to regulate their insurers, and control distribution of assets over which they have jurisdiction.

In *Morris v. Jones* (1946) 329 U.S. 545, 67 S.Ct. 451, 91 L.Ed. 488, this Court suggested that an Illinois court decree abating all actions against an insurer undergoing liquidation in that state may, if set forth as a defense, have terminated an action against the insurer in Missouri. In *Morris,* liquidation in Illinois was commenced after suit was filed in Missouri. Upon the commencement of liquidation, an Illinois court fixed a time for filing claims against the estate in liquidation and issued an order staying suits against it. Thereafter, the Illinois association stopped defending itself in the Missouri suit, and a judgment was obtained there. This Court, by Mr. Justice Douglas, observed that although the Missouri claimant had notice of the Illinois decree abating all actions against the insurer, no denial of full faith and credit by the Missouri courts had occurred, because no defense based on the decree had been raised in the Missouri proceedings. In regard to the failure of the insurer to assert the decree as a defense in the Missouri suit Justice Douglas noted that ". . . [W]hatever might have been the ruling on the question, the rights of the parties could have been

preserved by a resort to this court, which is the final arbiter of questions arising under the full faith and credit clause." *Morris v. Jones, supra,* 329 U.S. at p. 552.

In the instant case petitioner WMBIC presented a defense to the California courts based on the Wisconsin statutory provision requiring abatement. The California courts ignored this defense and the authority of this Court as expressed in *Morris v. Jones.*

More recently this Court has found a violation of the full faith and credit clause where a North Carolina court refused to recognize an Indiana court's decree purporting to settle all claims against the estate of an insurer undergoing rehabilitation under Indiana law. *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guarantee Association, supra,* (1982) 455 U.S. 691, 71 L.Ed.2d 558, 102 S.Ct. 1357. The specific dispute in *Underwriters* concerned a $100,000 deposit the insurer had posted in North Carolina in order to continue doing business in that State. When rehabilitation proceedings were commenced for the insurer in Indiana, title to all of its assets was transferred to the Indiana rehabilitator. Then, as Mr. Justice Marshall explained,

> "Shortly after entering the order of rehabilitation, the rehabilitation court enjoined the commencement or prosecution of any suit against *Underwriters* or the rehabilitator. This injunction stayed several policyholder actions that had been filed against *Underwriters*, and required that any person who desired to institute or to prosecute any such action join the Indiana rehabilitation proceeding." *Id.* at 455 U.S. at 695-696.

The footnote to this portion of the opinion indicates that three class actions pending in various United States

District Courts outside of Indiana, and one individual action in Washington State Court, were stayed. This is virtually the same relief petitioner unsuccessfully sought from the California courts in the instant case.

This court's decisions in such cases as *Morris* and *Underwriters* demonstrate the importance of the issues presented in this case. Both *Morris* and *Underwriters* concerned the failure to give full faith and credit to a judgment or decree rendered by the courts of a sister state. Both decisions concern the ability of the state overseeing the liquidation or rehabilitation of a financially disabled insurer to enjoin actions pending against it in other state courts. Although the full faith and credit clause does not require one state's enforcement of another's statutes without accommodation of the competing interests involved, the import of this Court's decisions in *Morris* and *Underwriters* is that state statutes requiring abatement of actions in another state against liquidating insurers, should be enforced where the balance of interests favors the state whose statute so provides.

II.

THE FULL FAITH AND CREDIT CLAUSE REQUIRES ENFORCEMENT OF A SISTER STATE'S STATUTORY REQUIREMENT OF ABATEMENT OF ALL ACTIONS AGAINST ALL INSURERS UNDERGOING LIQUIDATION IN THAT STATE WHERE THE FORUM STATE HAS NO ACTUAL INTEREST IN REFUSING ABATEMENT

In discussing the import of the full faith and credit clause, this Court has stated that:

> "The concept of full faith and credit is central to our system of jurisprudence. Ours is a union of states, each having its own judicial system capable of adjudicating the rights and responsibilities of the parties brought before it. Given this structure, there is always a risk that two or more states will exercise their power over the same case or controversy, with uncertainty, confusion, and delay that unnecessarily accompany relitigation of the same issue." *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guarantee Association* (1982) 455 U.S. 691, 71 L.Ed.2d 558, 102 S.Ct. 1357.

In the instant case, full faith and credit is sought for the statutory requirement of abatement of the Wisconsin insurer liquidation statutes. In this regard, this Court has explained that:

> "The Full Faith and Credit Clause does not require each state to give effect to official acts of other states. A judgment entered in one state must be respected in another provided that the first state had jurisdiction over the parties and the subject

> matter. Moreover, in certain limited situations, the courts of one state must apply the statutory law of another state. Thus, in *Bradford Electric Company v. Clapper,* (1931) 286 U.S. 145, 76 L.Ed. 1026, 52 S.Ct. 571, 82 ALR 696, the Court held that a federal court sitting in New Hampshire was required by the Constitution to apply Vermont law in an action between a Vermont employee and a Vermont employer arising out of a contract made in Vermont. But this Court's decision in *Pacific Insurance Company v. Industrial Accident Commission,* [1938] 306 U.S. 493, 83 L.Ed. 940, 59 S.Ct. 629, clearly establishes that the Full Faith and Credit Clause does not require a state to apply another state's law in violation of its own legitimate public policy." *Nevada v. Hall* (1979) 440 U.S. 410, 421-422, 59 L.Ed.2d 416, 99 S.Ct. 1182, *reh. den.* 441 U.S. 917, 60 L.Ed.2d 389, 99 S.Ct. 2018.

Clearly, recognition of another state's statutory law will not be required if the statute conflicts with a statute or policy of the forum state. *Pink v. A.A.A. Highway Express* (1941) 314 U.S. 201, 210, 86 L.Ed. 152, 62 S.Ct. 241. When such a conflict exists, the interests of the forum and the other state must be weighed and balanced. *Hughes v. Fetter* (1950) 341 U.S. 609, 611-12, 95 L.Ed. 1212, 71 S.Ct. 980.

Converse v. Hamilton (1912) 224 U.S. 243, 256, 56 L.Ed. 749, 32 S.Ct. 415, represents an example of the circumstances under which the courts of one state must enforce another state's statute. In that case, a Wisconsin court was found to have violated the full faith and credit clause by refusing to enforce a Minnesota statute regarding assessments levied against shareholders of a Minnesota corporation. Wisconsin law did not permit enforcement of liability of Wisconsin corporations by means

of assessment of stockholders. This Court noted, however, that the Minnesota statutes were "peculiarly within the regulatory power of the State of Minnesota; so much so that no other state properly can be said to have any public policy thereon. And what the law of Wisconsin may be respecting the relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and means of enforcing them, is apart from the question under consideration." *Converse v. Hamilton, supra,* 224 U.S. at pp. 260-61.

The same rationale is applicable to this case. Wisconsin's interest in conducting the liquidation of petitioner WMBIC far surpasses that of California in retaining this litigation.

Ostensibly, California's interest in not dismissing this action was to provide for its citizens a forum within which to sue. Promotion of this interest is facilitated by California Code of Civil Procedure section 410.30(a). At the time petitioner's motion to dismiss was heard by the Superior Court of California for the County of Los Angeles, this statute provided as follows:

> "(a) When a court upon motion of party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court may stay or dismiss the action in whole or in part on any conditions that may be just."[2]

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[2] Petitioner's motion to dismiss was heard and denied August 28, 1986. Significantly California Code of Civil Procedure section 410.30 was amended effective September 22, 1986 to add a provision that "the domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action." This amendment indicates California's recognition that mere residence in California is insufficient reason for retaining jurisdiction in all cases, and that there are circumstances that justify dismissal of an action brought by a California citizen.

California case law interpreting this statute has recognized that:

> "In determining the applicability of the doctrine [of forum non conveniens] the court must consider the public interest as well as the private interests of the litigants. The court must consider such factors as the ease of access of proof, the availability and cost of obtaining witnesses, the possibility of harassment of the defendant litigating in an inconvenient forum, the enforceability of the judgment, the burden on the community in litigating matters not of local concern, and a desirability of litigating local matters in local courts." *Goodwine v. Superior Court* (1965) 63 Cal.2d 481, 485, 47 Cal.Rptr. 201, 204.

This authority recognizes that, even without regard to the full faith and credit clause, California's interests may under certain circumstances be subordinated to those of another state.

Wisconsin's interest in abating all actions against an insurer undergoing liquidation under Wisconsin law, whose assets are located in Wisconsin, is primarily to preserve the assets of the estate in liquidation. Depletion of those assets through expenditures incurred to defend actions pending in other states is clearly detrimental to Wisconsin's interest in, and ability to equitably and fairly distribute the assets to claimants and creditors entitled to a portion of the estate. The Wisconsin Insurer Rehabilitation and Liquidation Act (Wisconsin Statutes Chapter 645) sets forth its purpose, in part, as follows:

> "The purpose of this chapter is the protection of the interests of the insureds, creditors, and the

> public generally, with minimum interference with normal prerogatives of proprietors, through . . .
> "(e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state; . . ." Wisconsin Statutes section 645.01(4).

In this case Wisconsin's interests are clearly paramount to those of California. Petitioner WMBIC has no assets in California. Should Short obtain a judgment against petitioner in California, that judgment could not be enforced in that state. Short's only recourse, in that event, would be to go to Wisconsin and submit his claim to the liquidation process. This is the same procedure he would follow if abatement was ordered.

Short's continued pursuit of this litigation in California can serve no useful purpose to either of the parties. Its only effect is the detriment suffered by the estate in liquidation as a result of WMBIC having to defend itself in this California action. Because Short can gain nothing by pursuing this litigation in California, California has no substantial interest in permitting the litigation to continue there. Accordingly, the refusal of the California courts to enforce the requirement of abatement set forth in the Wisconsin statute amounts to a denial of full faith and credit, as that provision has been interpreted by this Court.

California's policy of providing a forum for its citizens would not be violated by enforcing the abatement provision of the Wisconsin statutes. Moreover, California's policy would not be promoted or assisted, but would, in fact, be diminished by permitting this action to remain in the California courts, imposing a drain upon the judicial resources of the California court system, with no prospect whatsoever of a final resolution of respondent's claim

against petitioner should a judgment be obtained. Under these circumstances, full faith and credit has clearly been denied the Wisconsin statutes. As this Court explained in *Allstate v. Hague* (1981) 449 U.S. 302, 66 L.Ed.2d 521, 101 S.Ct. 633:

> "To be sure, a forum state need not give effect to another state's law if that law is in violation of its own legitimate public policy. Nonetheless, for a forum state to further its legitimate public policy by applying its own law to a controversy, there must be some connection between the facts giving rise to the litigation and the scope of the state's lawmaking jurisdiction."

Although this case does not involve a conflict of laws, there being no actual dispute as to which state's laws should be applied to resolving the litigation, this recognition of the need for an actual connection between the state's interests, and the promotion of those interests under the facts of any given case, cannot be overemphasized. California's interests will not be affected by enforcing the abatement provision of the Wisconsin statutes.

Under these circumstances, California's refusal to enforce Wisconsin's statutes, if upheld, will promote the "parochial entrenchment on the interests of other states" that the full faith and credit clause was designed to prevent. *Thomas v. Washington Gas Light Co.* (1980) 448 U.S. 261, 262, 65 L.Ed.2d 757, 100 S.Ct. 2647. For this reason, the decision of the California courts here poses a "substantial threat to our constitutional system of cooperative federalism" that cannot be approved by this Court. *Nevada v. Hall, supra,* 440 U.S. at p. 424, n. 24, 59 L.Ed.2d 416, 99 S.Ct. 1182.

Application of the full faith and credit clause requires not only balancing of the apparent or presumed interests

of the states whose laws or policies are in conflict, but an actual analysis of if, or how, those interests will be affected in any given case. If, as in here, there is no detrimental effect on the forum's interest and no actual conflict with its policies because of the circumstances presented, full faith and credit to a sister state's statutes should be afforded. California's interest in this case is illusory.

CONCLUSION

For these various reasons, this petition for certiorari should be granted. Petitioner reiterates that the California courts have not expressly set forth the basis for their refusal to afford the Wisconsin abatement statutes full faith and credit. Petitioner respectfully submits, however, that it must be presumed that either the courts declined to apply the analysis required by that Constitutional provision as interpreted by this Court, or did so erroneously. In either case, the necessity for interstate accommodation of insurer liquidation proceedings whether they be based on court decree or state statutory law requires resolution by this honorable Court.

DATED: April 26, 1987

Respectfully submitted,

PARKINSON, WOLF, LAZAR & LEO

JEFFREY H. LEO
JANE W. SUDHAUS
G. ARTHUR MENESES

Attorneys for Petitioner

APPENDIX A

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
2nd District, Division 4, No. B023141

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

SUPREME COURT
FILED
JAN 28 1987
Laurence P. Gill, Clerk

Deputy

WMBIC INDEMNITY CORPORATION,
Petitioner,

v.

SUPERIOR COURT OF THE
COUNTY OF LOS ANGELES,
Respondent;

SHORT,
Real Party in Interest.

Petition for review DENIED.

BROUSSARD
Acting Chief Justice

APPENDIX B

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

Court of Appeal Second Dist.
FILED
DEC. 10, 1986
Clay Robbins Jr. Clerk

Deputy Clerk

WMBIC INDEMNITY CORPORATION,
Petitioner,

v. NO. B023141

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,
Respondent, ORDER

DAVID M. SHORT,
Real Party in Interest.

(Super.Ct.No. C 585419)
(Robert O'Brien, Judge)

THE COURT:*

The petition for writ of mandate filed September 25, 1986, has been considered and is denied.

/s/ Woods	McClosky	Arguelles
* WOODS, P.J.,	McCLOSKY, J.,	ARGUELLES, J.

APPENDIX C

SUPERIOR COURT OF CALIFORNIA,
COURT OF LOS ANGELES

DEPT. 81

DATE August 28, 1986
HONORABLE Robert H. O'Brien Judge
HONORABLE Judge Pro Tem
I. Brown Deputy Clerk _____
Thelma Braucato Reporter
(Parties and counsel checked if present)

C 585 419
David M. Short, etc.,
vs
Continental Casualty Company,
etc., et al.,
Counsel for Plaintiff Kathleen Phipps √
K. Hamilton √
Counsel for Defendant Parkinson, Wolf, Lazar & Leo
By: Jane Sudhaus √

NATURE OF PROCEEDINGS

Motion of defendant, WMBIC Indemnity Corporation and AMBAC Indemnity Corporation to dismiss plaintiff's action as against WMBIC on the ground of inconvenient forum; (C.C.P. Section 410.30)
(First cont.)
(Irrelevant portion of court form omitted in printing)
[X] MOTION: [ ] granted as prayed [X] denied
[X] NOTICE: [ ] Waived [ ] By moving party
[X] By respondent(s)

MINUTES ENTERED
August 28, 1986
COUNTY CLERK

APPENDIX D

Name	Date Acquired	Date Organized	Percent of Ownership (Immediate Parent)	Nature of Business	State or Country of Incorporation	Immediate Parent
Allcity Ins. Co.	10/20/80	08/09/62	61.7	Insurance	NewYork	Empire Mutual Ins. Co.
Baldwin Enterprises, Inc. (1)	12/24/80	12/24/80	100	Holding	Colorado	PHLCORP, Inc.
Baldwin Life Ins. Co. (2)	12/18/81	12/18/81	80	Insurance	New York	The College Life Ins. Co. of America
PHLCORP, Inc.	N/A	03/24/77	N/A	Holding	Delaware	None
The Barbados Light & Power Co. Ltd.	01/27/78	05/06/55	45.25	Utility	Barbados	Canadian Int'l Power Liq. Trust
B-U Acquisition Corp.	01/27/81	01/27/81	100	Holding	New Jersey	PHLCORP, Inc.
B-U Acquisition Group, Inc. (3)	10/28/81	10/22/00	100	Holding	New Jersey	PHLCORP, Inc.
CLD, Inc.	08/14/80	08/14/80	100	Real Estate	Ohio	College Life Dev. Corp
Canadian Int'l Power Co. Ltd.	01/27/78	1956	100	Holding	Canada	Canadian Int'l Power Co. Ltd. Liq. Trust

Canadian Int'l Power Co. Liq. Trust	04/16/79	04/16/79	57.33	Holding	Canada	The Sperry & Hutchinson Co., Inc.
College Group, Inc.	11/18/86	11/18/86	100			The Sperry & Hutchinson Co., Inc.
College Life Dev. Corp.	03/14/79	10/31/69	100	Real Estate	Indiana	The Sperry & Hutchinson Co., Inc.
The College Life Ins. Co. of America	03/14/79	07/01/46	100	Insurance	Indiana	College/University Corp.
College Park, Inc.	01/28/82	01/28/82	100	Insurance	Indiana	College Mgmt Corp.
College Park Mgmt Corp.	03/14/79	11/30/66	100	Real Estate	Indiana	College University Corp.
College Services Corp.	09/10/81	09/10/81	100	Real Estate	Indiana	The College Life Ins. Co. of America
College/Univ. Corp.	03/14/79	11/12/68	99.7	Holding	Indiana	College Group, Inc.
Commercial Loan Ins. Corp.	03/09/82	11/30/66	100	Insurance	Wisconsin	Wisconsin Mortgage Assurance Corp.
Compania Admin. de Empresas	06/02/83	06/02/83	100	Inactive	Ohio	Co. Bol. de Energia Elec. S.A.-Bolivian Power Co. Limited
Co. Boliviana de Energia Elec., S.A. - Bolivian Power Co. Ltd. (4)	01/27/78	04/18/25	49.8	Utility	Nova Scotia, Canada	The Sperry & Hutchinson Co., Inc.

Co. de Alumbrado Elec. de San Salvador	01/27/78	11/17/1890	44.25	Utility	El Salvador	PHLCORP, Inc.
Concourse Agency, Inc.						Allcity Ins. Co.
Empall Agency, Inc.						Allcity Ins. Co.
Empire Capitol Corp.	08/28/85	08/28/85		Finance	Colorado	The Empire Savings Bldg. & Loan Assn.
Empire Mutual Ins. Co. (5)	10/20/80	02/06/25	75	Insurance	New York	The Sperry & Hutchinson Co., Inc.
The Empire Savings, Bldg. & Loan Assn.	01/20/69	04/04/31	100	Savings & Loan	Colorado	Baldwin Enterprises, Inc.
Empresa de Luz y Fuerta Elec. de Oruro	01/27/78	Pre 1929	96	Utility	Bolivia	Co. Boliviana de Energia Elec., S.A.-Bolivian Power Co. Limited
E.S.L. Corp.	01/09/70	12/09/70	100	Real Estate	Colorado	Empire Capitol Corp.
Executrol Corp.						
Kenwood Place Asso.		04/13/76	N/A	Real Estate	Maryland	College Serv. Corp.
LT Properties, Inc.		01/10/86		Real Estate	Delaware	PHLCORP, Inc.
Lake Sherwood Joint Venture	07/01/71	07/01/71	50	Real Estate	Colorado	E.S.L. Corp.
Lake Utilities, Inc.	03/14/79	02/06/69	100	Real Estate	Indiana	College Park Mgmt. Corp.

Law Mail, Inc.	11/17/86	11/17/86				Professional Data Mgmt., Inc.
Mt. Hood Pension Ins. Co.	05/20/81	05/20/81	100	Insurance	Arkansas	Mt. Hood Stages, Inc.
Mt. Hood Stages, Inc. (6)	02/19/81	06/10/31	91.7	Holding	Oregon	PHLCORP, Inc.
Nat'l Equity Life Ins. Co., Inc.	04/ /78	09/15/65	100	Insurance	Hawaii	PHLCORP, Inc.
The Nat'l Investors Life Ins. Co.	04/ /78	06/02/71	100	Insurance	Arkansas	PHLCORP, Inc.
National Investors Pension Ins. Co. (7)	05/16/78	05/16/78	100	Reinsurance	Arkansas	PHLCORP, Inc.
NECO, Inc.	02/05/85	02/05/85				PHLCORP, Inc.
Northmoor-South Apartments, Ltd.	10/15/74	10/15/74	2	Real Estate	Colorado	E.S.L. Corp.
Professional Data Mgmt., Inc.	06/27/85		100	DP Consulting	Indiana	College/University Corp.
Professional Mktg. & Admin., Inc.	10/30/84		100	Insurance	Indiana	College Services Corp.
S & H Life Ins. Co.	10/28/81	10/07/68	100	Insurance	Indiana	PHLCORP, Inc.
S & H Motivation, Inc.	10/28/81	03/28/81	100	Incentive	New York	The Sperry & Hutchinson Co., Inc.

The Sperry & Hutchinson Co., Inc.	10/28/81	08/11/81	100	Incentive	New Jersey	PHLCORP, Inc.
Ten B-U Indemnity Corp.	02/08/82	02/08/82	100	Holding	Wisconsin	PHLCORP, Inc.
Thirty-Eight B-U Ins. Corp.	02/08/82	02/08/82	100	Holding	Wisconsin	PHLCORP, Inc.
330 Madison Avenue, Inc. (8)	12/15/81	12/15/81	100	Real Estate	New York	PHLCORP, Inc.
T. V. Travel, Inc.		03/18/66	100	Travel	Ohio	The Sperry & Hutchinson Co., Inc.
Univ. Life Ins. Co. of America	03/14/79	09/20/54	100	Insurance	Indiana	The College Life Ins. Co. of America
WMAC Credit Ins. Corp.	03/09/82	09/27/73	100	Insurance	Wisconsin	Wisc. Mortgage Guar. Assur. Corp.
WMAC Investment Corp. (9)	03/09/82	05/06/68	100	Holding	Wisconsin	38 B-U Corporation & Others
WMBIC Indemnity Corp.	03/09/82	11/10/80	100	Insurance	Wisconsin	WMAC Investment Corp.
Winconsin Mortgage Assurance Corp. (10)	03/09/82	11/14/56	99.97	Insurance	Wisconsin	WMAC Investment Corp.

FOOTNOTES TO PHLCORP, INC. ORGANIZATIONAL CHART

1. BALDWIN ENTERPRISES, INC.

29,691	Class A Common Shares (49.87% of the equity) (12.97% of the voting power) held by WMAC Investment Corporation
29,840	Class B Common Shares (50.13% of the equity) (87.3% of the voting power) held by PHLCORP, Inc.
30,000	Class C Series 1 Preferred Shares (100%) held by NIPIC

2. BALDWIN LIFE INSURANCE COMPANY

160,000	Common Shares (80%) held by Walter Cohen, Marcia D. Alazraki, and N. Clay Johnson, Trustees U/A dated December 24, 1986 F/B/O The Sperry & Hutchinson Company, Inc.
40,000	Common Shares (20%) held by Walter Cohen, Marcia D. Alazraki, and N. Clay Johnson, Trustees U/A dated December 24, 1986 F/B/O The College Life Insurance Company of America Inc.

3. B-U ACQUISITION GROUP, INC.

9,432,596	Common Shares held by B-U Acquisition Corporation

4. COMPANIA BOLIVIANA de ENERGIA ELECTRICA, S.A., - THE BOLIVIAN POWER COMPANY

1,469,156 Common Shares (49.8%) held by PHLCORP, Inc.
5 Common Shares held by Directors of The Bolivian Power Company
Balance of Common Shares are publicly held.

5. EMPIRE MUTUAL INSURANCE COMPANY

Section 76 Surplus Note entitles holders to receive 75.1% of Empire's net income or loss
Holders of these notes are as follows:
$21.1 Million principal amount held by The Sperry & Hutchinson Company, Inc.
2.2 Million principal amount held by WMAC Investment Corporation
1.7 Million principal amount held by College Life Development Corporation

6. MT. HOOD STAGES, INC.

1,879.99 (91.7%) held by PHLCORP, Inc.
97.15 (4.7%) held by Investors Equity Life Insurance Company of Hawaii, Ltd.
72.86 (3.6%) held by WMAC Investment Corporation

7. NATIONAL INVESTORS PENSION INSURANCE COMPANY (NIPIC)

1,000,000 Common Shares held by PHLCORP,Inc.
2,000 Class A Cumulative Preferred Shares held by PHLCORP, Inc.

8. 330 MADISON AVENUE, INC.

Common Shares

28 (77.8%) held by PHLCORP, Inc.
4 (11.1%) held by WMAC Investment Corporation
4 (11.1%) held by College Services Corporation

16% Cumulative Convertible Preferred Shares

12,222 (77.8%) held by PHLCORP, Inc.
2,000 (12.3%) held by College Services Corporation
1,600 (9.9%) held by WMAC Investment Corporation

9. WMAC INVESTMENT CORPORATION

Common Shares

702,216 (70.621%) held by Thirty-Eight B-U Insurance Corporation
154,278 (15.4278%) held by Ten B-U Indemnity Corporation
139,686 (5.9997%) held by PHLCORP, Inc.

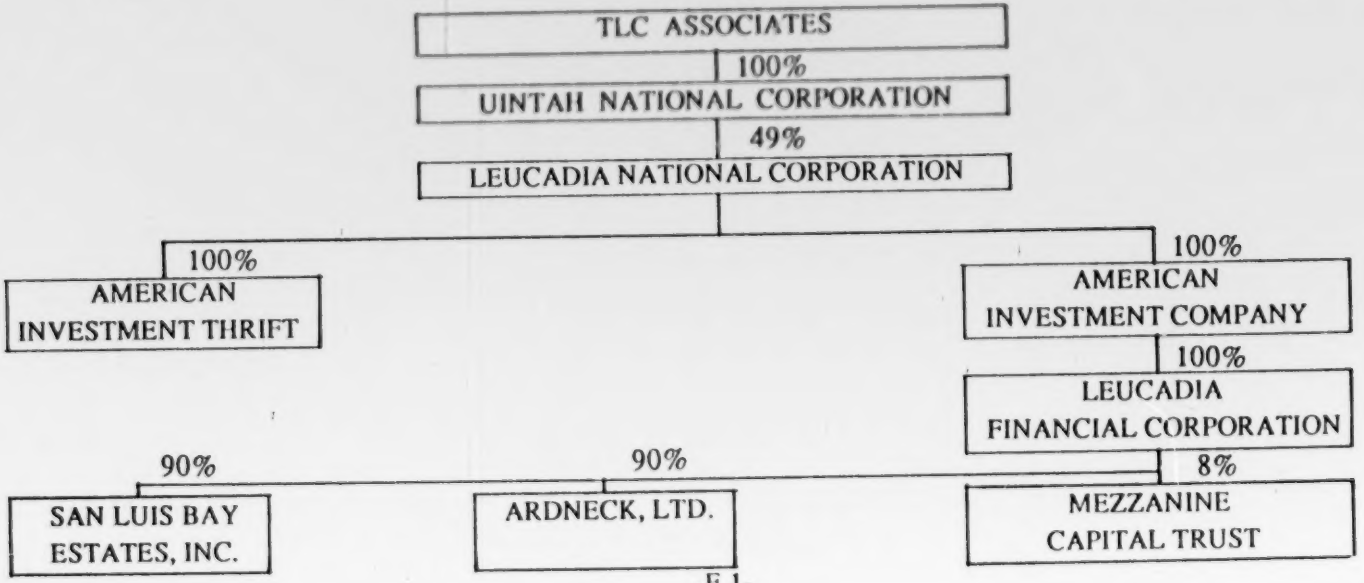
10. WISCONSIN MORTGAGE ASSURANCE CORPORATION

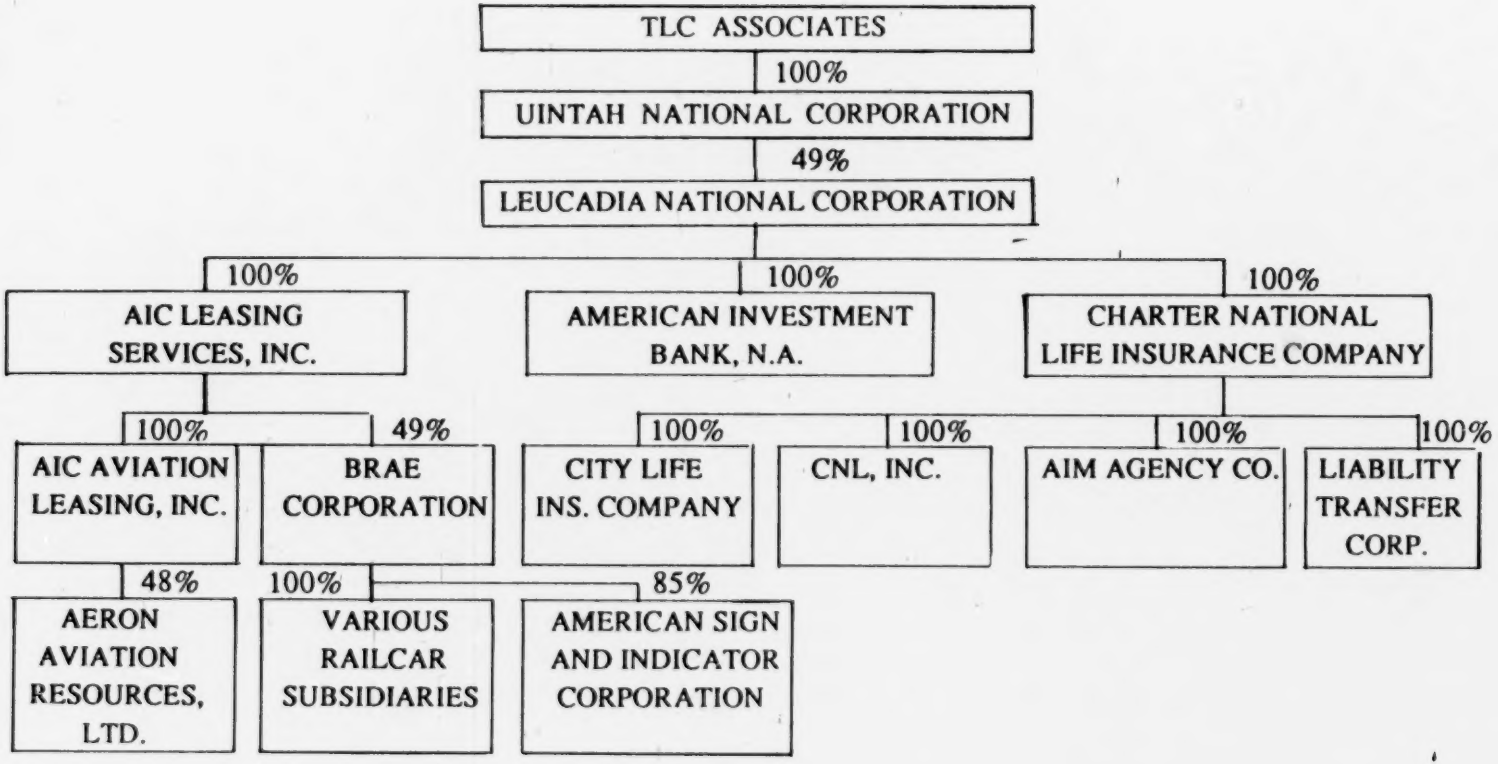
1,794,178 Common Shares (99.97%) held by WMAC Investment Corporation
557 Common Shares (0.03%) held by non-affiliates

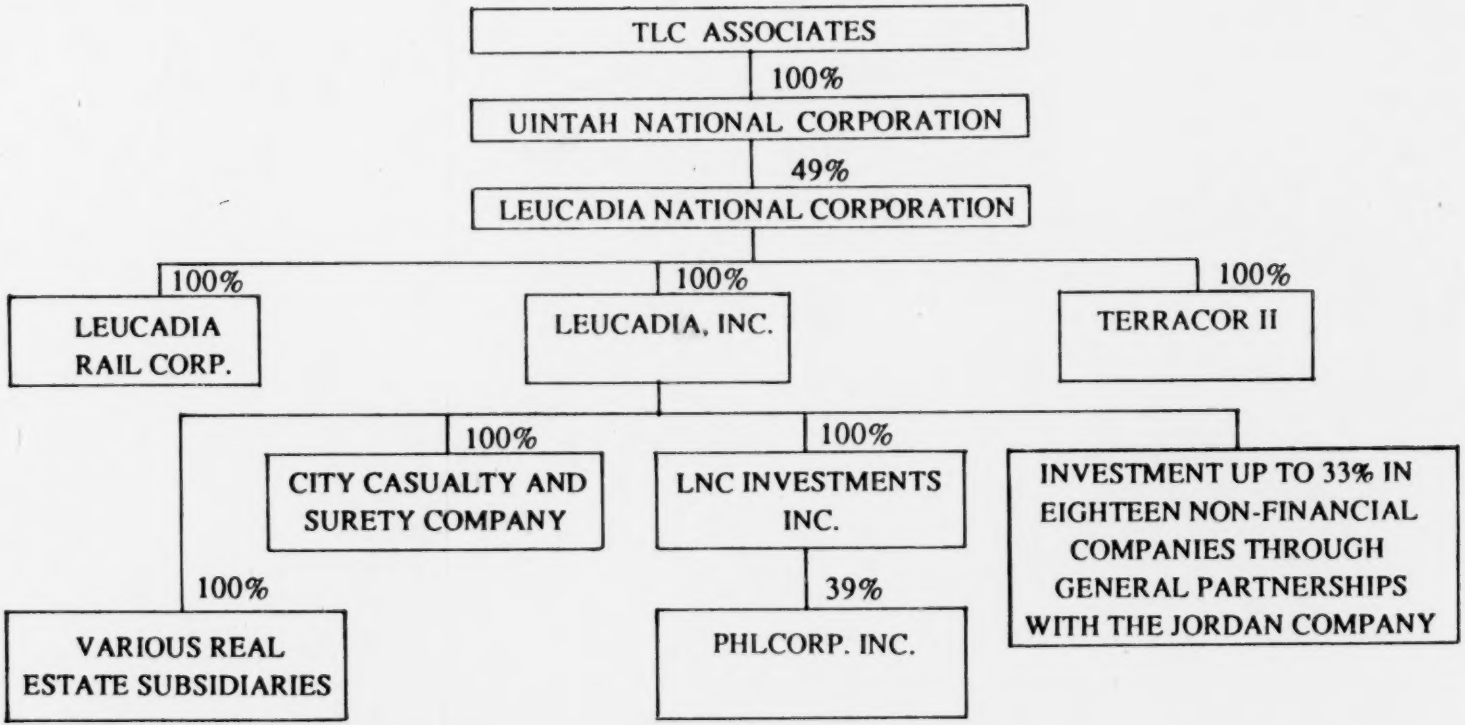
APPENDIX E

ANNUAL STATEMENT FOR THE YEAR 1986
OF THE CHARTER NATIONAL LIFE INSURANCE COMPANY
SCHEDULE Y — ORGANIZATIONAL CHART

Attach a chart or listing presenting the identities of and interrelationships among all affiliates, identifying all insurers as such. No non-insurer affiliate need be shown if its total assets are less than 1/2 of 1% of the total assets of the largest affiliated insurer.




TLC ASSOCIATES
100%
UINTAH NATIONAL CORPORATION
49%
LEUCADIA NATIONAL CORPORATION
100%
AIC LEASING SERVICES, INC.
100%
AMERICAN INVESTMENT BANK, N.A.
100%
CHARTER NATIONAL LIFE INSURANCE COMPANY
100%
AIC AVIATION LEASING, INC.
49%
BRAE CORPORATION
100%
CITY LIFE INS. COMPANY
100%
CNL, INC.
100%
AIM AGENCY CO.
100%
LIABILITY TRANSFER CORP.
48%
AERON AVIATION RESOURCES, LTD.
100%
VARIOUS RAILCAR SUBSIDIARIES
85%
AMERICAN SIGN AND INDICATOR CORPORATION



NOTE: All members of a Holding Company Group shall prepare a common Schedule for inclusion in each of the individual annual statements and the consolidated Fire and Casualty Annual Statement of the Group.